26

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Supreme Court of the United States

October Term, 1952

No. 640

HAMMERMILL PAPER COMPANY, a corporation,
Petitioner,

v.

CITY OF ERIE.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

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SUBJECT INDEX.

PAGE

Opinions Below 1
Jurisdiction 1
Question Presented 4
Statutes Involved 4
Statement 4
Reasons for Granting the Writ 6
Conclusion 8
Appendix 9
A. Property Subject to Taxation for County Purposes 9
B. Assessment of Property by Third Class City .. 10

TABLE OF CASES.

Cumberland Coal Co. v. The Board of Revision of Tax Assessments, 284 U. S. 23 .....3, 6, 7
Patterson v. Delaware County, 70 Pa. 381 6
Sioux City Bridge Co. v. Dakota County, 260 U. S. 441 .....3, 6
United Laundries v. Board of Assessment, 359 Pa. 195 6

STATUTES.

Act of June 23, 1931, P. L. 932, Art. XXV, § 2504, as amended by the Act of May 25, 1939, P. L. 225, § 1; Act of April 10, 1945, P. L. 167, (53 P. S. § 12198—2504) 10
Act of May 22, 1933, P. L. 853, Art. II, § 201, as amended by the Act of July 2, 1941, P. L. 219, § 1 (72 P. S. § 5020—201) 9
Section 201 of the General County Assessment Law ..6, 7
28 U. S. C. Section 1257(3) 2

MISCELLANEOUS.

14th Amendment of the Constitution of the United States 2, 4, 6

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

Hammermill Paper Company, a Corporation, prays that a writ of certiorari issue to review the judgment of the Supreme Court of Pennsylvania entered November 18, 1952 (R. p. 83).

Opinions Below

The opinion of the Court below (R. p. 83) is reported at 372 Pa., 85.

Jurisdiction

1. The Supreme Court of Pennsylvania rendered its opinion and judgment on November 18, 1952 (R. p. 83). A timely motion for reargument was filed on November 25,

1952 (R. p. 95). This motion was denied *per curiam* on December 5, 1952 (R. p. 103).

2. The jurisdiction of this Court is invoked under 28 U. S. C. Section 1257(3).

3. The federal question sought to be reviewed by this Court was timely raised and decided. In accordance with the statutory procedure, Petitioner appealed the real estate tax assessment imposed by the City of Erie to the Court of Common Pleas of Erie County, Pennsylvania. In the pleadings before the trial Court, Petitioner alleged, *inter alia*, that the assessment deprived it of its property without due process and denied to Petitioner the equal protection of the laws, in violation of the 14th Amendment of the Constitution of the United States. The trial Court found the assessment to be unconstitutional and in violation of the principle of uniformity. On appeal by the City of Erie to the Supreme Court of Pennsylvania, the trial Court was reversed and the assessment was held to be valid under the laws and the Constitution of the State of Pennsylvania and under the 14th Amendment of the Constitution of the United States. With respect to the federal claim, the Supreme Court of Pennsylvania held as follows:

> "There is no merit in appellee's contention that the principle set forth in *Hillsborough v. Cromwell*, 326 U. S. 620; *Sioux City Bridge Co. v. Dakota County*, 260 U. S. 441; *Iowa-Des Moines National Bank v. Bennett*, 284 U. S. 239; *Cumberland Coal Co. v. The Board of Revision of Tax Assessments*, 284 U. S. 23, has been violated. Considering the nature and kind of property involved as well as the practical conditions and difficulties, there has been, in our judgment, no unreasonable classifications, no unjust discrimination, or any intentional or systematic undervaluation of like or similar properties of the same class, or any intentional violation of the essential principle of practical uni-

formity; hence there was no violation of the Fourteenth Amendment of the Constitution of the United States."

4. The following real estate assessment cases are believed to sustain the jurisdiction of this Court:

Cumberland Coal Co. v. The Board of Revision of Tax Assessments, 284 U. S. 23.

Sioux City Bridge Co. v. Dakota County, 260 U. S. 441.

5. The Supreme Court of Pennsylvania is the highest Court of that state.

6. Petitioner has exhausted all state remedies applicable to real estate assessment cases in Pennsylvania.

7. The judgment of which review is sought is a final order. The Supreme Court of Pennsylvania reversed the order of the Court of Common Pleas and reinstated the disputed interim assessment. "Because it [was] doubtful from the record whether duplications or (relatively) minor mistakes were made * * *" in the assessment, the Supreme Court of Pennsylvania remanded to the trial Court for "any further proceedings it [might] deem meet, not inconsistent with this opinion." (R. pp. 94, 95).

The minor errors mentioned were of a clerical nature and the duplications arose through an oversight of the City Assessor. These errors and duplications have never been a source of dispute between Petitioner and Respondent, since both parties have at all times been willing to correct these mathematical and accounting mistakes (R. pp. 25, 26).

These minor ministerial matters have been settled by agreement of counsel, (see Stipulation, Appendix, (R. p. 113)) and no further proceedings remain in the trial Court.

Question Presented

Whether the intentional and systematic plan of real estate tax assessment adopted by the City of Erie, whereby certain real estate has been assessed on an admittedly higher standard of value than that employed for the valuation of other real estate of the same statutory class, denies Petitioner the equal protection of the laws guaranteed by the 14th Amendment to the Constitution of the United States.

Statutes Involved

The pertinent statutory provisions are printed in the Appendix, *infra*, pages 9-10.

Statement

The statutes of Pennsylvania (quoted in the Appendix, *infra*) provide that the Assessor shall make, during the year of the triennial assessment, "a full, just, equal and impartial assessment" of "all real estate". The Assessor is also authorized to make a similar assessment in intertriennial years. Under the law of Pennsylvania industrial machinery, even though not affixed to the realty, is real estate, and as such is subject to be included in the real estate assessment.

Prior to 1949 the assessment of *all* real estate in Erie, Pennsylvania, was based upon the standard of 1933 values. In 1949, however, the City Assessor of Erie reassessed most of the industrial real estate located in the City, leaving untouched previous assessment figures on non-industrial property. In the assessment of the 100-odd largest industries in Erie, the Assessor, with the aid of an independent appraisal firm, Cole-Layer-Trumble, intentionally

and systematically valued the machinery part of real estate upon a 1941 standard of value, which latter standard he stated (R. p. 38) was substantially higher than the 1933 values used for all non-industrial real estate. In assessing the smaller industrial properties, the Assessor did not have the aid of the appraisal firm, and his assessments were based on a myriad of standards of value which are unintelligible (R. p. 45). This latter group of assessments, however non-uniform, does not form the basis of this petition.

Petitioner, a real estate taxpayer whose assessment included industrial machinery upon the higher standard of 1941 value, followed the statutory procedure of appeal to the Court of Common Pleas of Erie County, alleging, *inter alia*, that its assessment, by including a higher standard of value than was used for other real estate taxpayers who did not own industrial machinery, denied to it the equal protection of the laws. Since it was impossible to determine which of the many standards of value used by the City Assessor was the legal and correct standard, Petitioner did not place in evidence its own valuation figures. It did not insist that its machinery be valued on 1933 values, since this would have been virtually impossible in view of the fact that much of its machinery was not invented at that time. It did insist, however, that to be valid the entire assessment had to be based on one uniform standard (e. g., 1941 values) and all real estate, land, buildings and machinery, industrial and non-industrial, in the City, be assessed on that single standard.

The Court of Common Pleas determined the assessment to be "discriminatory, non-uniform and unconstitutional", but the Supreme Court of Pennsylvania upheld the assess-

ment, holding that the Assessor's procedure was not a violation of the 14th Amendment (R. p. 94).

On December 5, 1952, the Supreme Court of Pennsylvania refused a petition for re-hearing.

Reasons for Granting the Writ

1. In upholding the plan of assessment adopted by the City of Erie, the Supreme Court of Pennsylvania has rendered a decision directly in conflict with the applicable decisions of this Court. This Court has held consistently and unequivocally that intentional or systematic under-valuation of property of a certain class is a denial of equal protection of the law to others whose property of the same class is valued on a higher standard. *Cumberland Coal Company v. Board of Revision of Greene County, Pa.*, 284 U. S. 23; *Sioux City Bridge Company v. Dakota County*, 269 U. S. 441.

This is not a case in which a state by statute has established different classes of real estate on a reasonable and rational basis, and authorized the imposition of higher taxes on one class than on others.

The Pennsylvania Legislature in enumerating the subjects of taxation has clearly made a distinct class of "real estate". Section 201 of the General County Assessment Law (set forth in full in the Appendix to this petition) enumerates the "subjects and property" which shall be "valued and assessed and subject to taxation" for local purposes. The enumeration clearly sets forth three classes and one of these is "(a) all real estate". For years in Pennsylvania industrial machinery has been considered real estate and subject to assessment and taxation as real estate. *Patterson v. Delaware County*, 70 Pa. 381; *United*

Laundries v. Board of Assessment, 359 Pa. 195. The City of Erie under the Third Class City Code is required to make a "full, just, equal and impartial assessment" of real estate as one of the classes of property assessable and taxable under the General County Assessment Law. Therefore the City of Erie assesses and taxes real estate as a definite statutory class of taxable property, and that class includes industrial machinery.

The Supreme Court of Pennsylvania recognized that the statute required uniformity in the taxation of all real estate, including industrial machinery. Nevertheless, the Court held that the use of a standard of value for industrial machinery which was admittedly higher than the standard applied to other real estate was "uniform treatment" within the requirements of the Equal Protection clause. This decision flatly contradicts the clear principles laid down by this Court. As in the *Cumberland Company* case, *supra*, the Supreme Court of Pennsylvania has erroneously permitted discriminatory treatment as among taxpayers holding property of the same taxable class.

The question presented is of serious importance to the fair administration of state tax laws. Unless the imposition of differing tax rates is confined to instances in which state legislatures, after thorough consideration, have set up a reasonable classification, local authorities will be free, as in this case, to discriminate arbitrarily and capriciously and set up "classes" as they see fit. The dangers of vesting such power in local administrative officials are obvious. In addition to Pennsylvania, some forty-five other states basically have defined real estate as a statutory class of property for taxation. The present decision of the Pennsylvania Supreme Court has permitted the local Assessor to disregard that legislative mandate and to assess some real estate on a higher standard than other real estate.

To do this that Court accepted the undisputed fact that two standards were used within the same class, but then created a novel fiction of a "practical equivalent" of uniformity—a fiction which merely says that two are the equivalent of one. If this fiction can prevail in Pennsylvania, it can likewise prevail in those forty-five other states which have not seen fit to divide "real property" into subclasses. The constitutional guarantee and the statutory mandate would thus be replaced by the arbitrary whim of a local assessor, subject to influence of local political pressures, and creating classifications which could not be achieved through the normal political processes of legislation. It is important that this Court again make clear to local taxing authorities that if classifications of property are to be established, they must be created on a *reasonable* basis by *statute* and not by arbitrary administrative choice.

Conclusion

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

M. E. GRAHAM,
Counsel for Petitioner.

February 28, 1953.

APPENDIX

A. Property Subject to Taxation for County Purposes.

Act of May 22, 1933, P. L. 853, Art. II, § 201, as amended by the Act of July 2, 1941, P. L. 219, § 1 (72 P. S. § 5020—201):

"The following subjects and property shall, as hereinafter provided, be valued and assessed, and subject to taxation for all county, city, borough, town, township, school and poor purposes at the annual rate:

"(a) All real estate to wit: Houses, lands, lots of ground and ground rents, mills and manufactories of all kinds, furnaces, forges, bloomeries, distilleries, sugar houses, malt houses, breweries, tan yards, fisheries, and ferries, wharves, and all other real estate not exempt by law from taxation.

"(b) All salaries and emoluments of office, all offices, and posts of profit, professions, trades and occupations, except the occupation of farmer, and all persons over the age of twenty-one years who do not follow any occupation or calling, as well of unnaturalized foreign-born persons who shall have resided within this Commonwealth for one whole year, as of citizens of this Commonwealth: Provided, That whenever a person, other than a Federal employe, not taxable under the provision of this clause, is disfranchised from voting because he cannot be lawfully assessed for a county or State tax, it shall be lawful for the county commissioners to assess the occupation of such persons for county taxation purposes, in the manner provided by this act for such assessments. The provisions of this clause shall not apply to counties of the second and third class, or to any other county, the county commissioners of which shall by resolution determine not to levy a tax on trades, occupations, professions and persons who follow no occupation or calling, nor shall the provisions of this clause apply to cities of the second and second A class, or to school districts.

"(c) All other things and persons now taxable by the laws of this Commonwealth for county, city and school purposes."

B. Assessment of Property by Third Class City.

Act of June 23, 1931, P. L. 932, Art. XXV, § 2504, as amended by the Act of May 25, 1939, P. L. 225, § 1; Act of April 10, 1945, P. L. 167, (53 P. S. § 12198—2504):

"The assessor shall make, or cause to be made, during the year one thousand nine hundred forty-five, and every third year thereafter, a full, just, equal, and impartial assessment of all property, taxable according to the laws of this Commonwealth for county purposes, and all matters and things within the city subject by law to taxation for city purposes, and a just and perfect list of all property exempt by law from taxation, with a just valuation of the same. * * * In all cases he shall value, or cause to be valued, the property at the actual value thereof. In arriving at such value the price for which any property would separately *bona fide* sell, or the price at which any property may *bona fide* actually have been sold, shall be considered, but shall not be controlling. Instead such selling price, estimated or actual, shall be subject to revision by increase or decrease to accomplish equalization with other similar property within the taxing district. * * *"

21

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RESPONDENT'S BRIEF ON PETITION FOR WRIT OF CERTIORARI

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SUBJECT INDEX

	PAGE
Opinions Below	1
Counter Statement of Question Presented.	1
Counter Statement of the Case	1
Argument	3
Conclusion	5

Table of Cases

Cumberland Coal Co. v. Board of Revision of Greene County, 284 U.S. 23	3
Northside Laundry Co. v. Board of Assessment, 168 Pa. Superior Ct. 495, 79 A 2d 215	4
Sunday Lake Iron Co. v. Wakefield 247 U.S. 350	5
United Laundries v. Board of Property Assessment 359 Pa. 195, 58 A. 2d 833	2

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Opinions Below

The opinion of the Court below (R. p. 83) is reported at 372 Pa., 85.

Counter Statement of Question Presented

Whether the use of different methods or yardsticks or formulas by an assessor to arrive at the values of different types of real estate for assessment purposes denies the taxpayer the equal protection of the laws under the 14th Amendment of of the Constitution of the United States.

Counter Statement Of The Case

Prior to 1949 the Assessment of all real estate in the City of Erie, Pennsylvania, was based upon values established in

a general reappraisal of all properties made in 1933 and an "assessor's manual" prepared in that year. These values were generally readopted for subsequent trienniel assessments, including that made in 1948. Although industrial machinery is required to be included in real estate assessments, by mistake of law, the value of industrial machinery had been omitted from all real estate assessments up through the year 1948. Under the impetus of the decision of the Supreme Court of Pennsylvania in *United Laundries v. Board of Property Assessment,* 359 Pa. 195, 58 A 2d 833, further defining and clarifying the law with regard to assessment of industrial machinery, and spurred by an action of mandamus brought against the City Council and the City Assessor to compel the inclusion of such values in assessments, the City Council in 1949 directed the Assessor to make new assessments including the value of industrial machinery as part of assessed value of real estate.

To aid the Assessor in making a determination of the values of industrial machinery, the City Council entered into a contract with the Cole-Layer-Trumble Co., a professional industrial appraisal firm, to make appraisals of industrial machinery in the 109 largest industrial plants in the city for the use of the Assessor. In making a re-assessment of smaller industrial plants, the value of such machinery as had been previously omitted was determined by the assessor himself.

The professional appraisal firm made its appraisal of values based on a formula which called for the use of 1941 replacement costs less depreciation. The assessor adopted

these valuations and added them to the prior real estate assessment figures to determine the new assessment for 1950. Petitioner is one of the 109 large industrial properties whose new assessment was determined in this way.

Petitioner followed the statutory form of appeal to the Common Pleas Court, but at the hearing did not offer any evidence of value to contest the value placed upon its property by the assessor, contending that the entire new assessment was invalid because all land, buildings, machinery, industrial and non-industrial, had not been assessed on a single standard of value. Its appeal was sustained by the Court of Common Pleas, but was reversed by the Supreme Court of Pennsylvania (R. p. 83 et seq.)

Argument

Respondent contends that the question at issue is not new, nor is it lacking in controlling precedents in this court.

Respondent recognizes that an intentional and systematic undervaluation of property of a certain class denies the equal protection of the laws to those whose property is valued on a higher standard. *Cumberland Coal Co. v. Board of Revision of Greene County, Pa.* 284 U.S. 23. But there is no evidence to support any contention in the present case that any deliberate and systematic plan of undervaluation was applied to other properties than that of petitioner. In the *Cumberland Coal Co.* case, supra, the township established a rule that all virgin coal lands in the township should be assessed at $260 per

acre, regardless of its actual or market value, while all other real estate was to be valued according to its market value. Here is a clear example of a deliberate and intentional application of different *standards* of assessment to property of the same statutory class, the one related to actual or market value, and the other to an arbitrary and fixed value having no relation to market or actual value. There is no such factor present in the case at bar.

In the present case we have merely an example of a difference in methods or yardsticks or formulas used in ascertaining and determining the values of different kinds of real estate, even though all real estate is but one statutory class of property for the purpose of taxation. It cannot be denied that there is such a vast difference between a simple dwelling house and a unique multi-million dollar industrial complex with its essential machinery as to require an assessor to adopt a different manner of approach to determine the value of each, though each belongs to the class of real estate. This difference provides a reasonable and practical basis for a different manner of arriving at value. *Northside Laundry Co. v. Board of Assessment* 168 Pa. Superior Ct. 495, 79 A 2d 215.

Despite the difficulties with which he was faced in a new and immensely difficult field, the Assessor testified that he was considering each property as a whole piece of real estate (R. p. 39), that he was looking for machinery that was omitted that added value to the real estate (R. p. 39) and that in reaching his final conclusion it was his opinion that the valuations adopted were fair valuations of the property

involved (R. p. 23), that in each case he tried to establish what he thought was a fair value (R. p. 37) and he took all factors into consideration in arriving at the entire real estate assessment (R. p. 40).

Respondent contends that any shortcomings of the assessor's methods here falls far short of the standards set by this Court in *Sunday Lake Iron Co. v. Wakefield* 247 U.S. 350, at p. 353 "Mere errors in judgment will not support a claim of discrimination. There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.....

....."But we are unable to conclude that the evidence suffices clearly to establish any purpose or design to discriminate." This Court's statement in regard to the action of the local assessment body in the *Sunday Lake* case might also apply to the situation under which the assessment in question was made (p. 353) "Its action is not incompatible with an honest effort in new and difficult circumstances to adopt valuations not relatively unjust or unequal."

Conclusion

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

March 28, 1953

GERALD J. WEBER
City Solicitor

MAURICE J. COUGHLIN
Assistant City Solicitor

Counsel for Respondent